

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.56457 of 2007
LAL SAHEB RAI
Versus
STATE OF BIHAR

4 7.5.2008 Heard Counsel for the petitioner and the A.P.P.
representing the State.

The petitioner is facing prosecution under Section 302/201/34 of the Indian Penal Code. Though the petitioner namely Lal Saheb Rai, his father and brother are named accused in the First Information Report itself but such First Information Report was based on hearsay version of one grandson of Saukat Ali who is said to have revealed to the Informant that her son Upendra was done to death and only after that the finger of suspicion has been raised by the Informant that such murder of her son was caused by the father and his two sons Upendra Sao and Lal Saheb Rai (petitioner).

Counsel for the petitioner has submitted that in the entire case diary, there is no eyewitness and even the chain of circumstances is not completed inasmuch as even when some witnesses have given a story that the father of the petitioner had advanced some money to the deceased and the murder may have taken place on account of the demand of such loan amount. He has further submitted that there is nothing on record to show at least in the case

diary that any one had even seen the deceased in the house of the petitioner either with his father or with the two sons including the petitioner.

Repelling the contention of the counsel for the petitioner, counsel for the State has submitted that the chain of circumstances are sufficient to prove that the petitioner along with his father and brother had murdered the deceased as there was a strong motive for killing the deceased, the complicity of the father and two sons including the petitioner (Saheb Rai) cannot be ruled out.

Having considered the aforementioned submissions and upon perusing the case diary, it does not stand to reason that if the deceased had taken Rs. 2,000/- from the father of the petitioner or from the petitioner, that cannot be by itself a motive for killing the deceased because if the petitioners were demanding Rs. 15,000/- by way of interest on the said amount of Rs. 2,000/-, the same could have been recovered only if the deceased was alive. In such circumstances, the link of circumstantial evidence cannot be said to have been completed only because of demand of money. That apart, there is no eyewitness to the said occurrence and there is nothing in the case diary against the petitioner save and except some statement of witnesses based on hearsay evidence.

As it has been asserted that the petitioner is in

custody 11.10.2007 i.e. for the period more than six months and that there is no criminal antecedent of the petitioner, this Court directs the petitioner to be released on bail in connection with Garkha P.S. Case No. 152 of 2007 on furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Saran (Chapra). It is however made clear that one of the bailers must be either wife or mother of the petitioner.

Rsh

(Mihir Kumar Jha, J.)

